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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

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FILED
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JOHN F. DAVIS, CLERK

No. 1216

NISHAN PAUL,

Petitioner,

vs.

DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, et al.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This is the temporary nocturnal courthouse decorative Christmas cross case instituted by Paul claiming such cross violated the establishment of religion clause. The Circuit Court of Dade County, Florida, found to the contrary and declared that the courthouse Christmas decorations did not infringe upon Paul's constitutional rights, immunities and privileges. The declaratory decree was affirmed by the District Court of Appeal of Florida, Fla. App. 1967, 202 So.2d 833, and certiorari denied by Fla. Sup.Ct. — So.2d — ; obviously, because it did not have jurisdiction.

We will use italics for emphasis, "County" for respondent, and, as indicated above, "Paul" for petitioner.

Right here and now, it is admitted that the latin cross is in the form of a Christian symbol, as is most every sign, animal, plant and object, as may be seen in George Ferguson's "Signs and Symbols in Christian Art". However, this admission does not confess that the nocturnal courthouse cross, one part of the courthouse Christmas decorations, is devoid of a secular connotation or that its purpose is to establish a religion, prohibit the free exercise thereof, deny equal protection of the law, or to interfere with Paul's religious opinions and rights of conscience.

QUESTIONS PRESENTED

1. DOES PAUL HAVE A STANDING TO SUE?

2. DO THE COURTHOUSE CHRISTMAS DECORATIONS, INCLUDING THE LIGHTED LATIN CROSS, VIOLATE ANY FEDERAL CONSTITUTIONAL PROVISION?

3. WAS THE PETITION FOR CERTIORARI TIMELY FILED?

STATEMENT OF THE CASE

The complaint seeks a declaratory decree adjudicating that the expenditure of public funds, in order to place lights outlining a latin cross, a Christmas decoration, on the south side of the courthouse during the 1966 Christmas

season, violates both Federal and State Constitutions concerning the separation of church and state.

Motion to dismiss was not ruled upon; answer was filed; and the case went to final hearing. Thereupon, the trial court entered its declaratory decree, the pertinent portions being quoted as follows:

> "1. The Plaintiff, a Dade County taxpayer, is a man *in his sixties who became an atheist when he was sixteen years of age and is still a non-Christian.*
>
> "2. The Latin cross that will be installed on the Dade County Courthouse during the 1966 Christmas season is erected by a string of lights in a form outlining such a cross and is *only lit at night after Courthouse hours* and its installation, maintenance, lighting and removal will be completely *paid for by the use of private funds ($840.00)* donated by various individuals, and thus *no part of the Plaintiff's tax moneys will be used;* but if his tax moneys were used, his share of the $840.00 cost would be *infinitesimal.*
>
> "3. The said cross is in the form of a religious symbol; however, it is placed on the Courthouse as one of the *several Christmas decorations,* and such decorations are for the public welfare since they are merely a means of expressing to the community as a whole a wish for a 'Merry Christmas.' Such expression is a *secular one* since the Christmas season has become more of a secular festival period when people celebrate with parties

and gift-giving; thus, the true Christian connotation of Christmas has generally lost its original religious meaning. Certainly, a cross on the face of the Courthouse as a Christmas decoration cannot offend a non-Christian any more than, or as much as, *the Madonna and Child pictured on the face of the United States five-cent stamp* which emphasizes the 1966 Christmas season. Therefore, it appears to the Court that the Courthouse decorative cross has *a secular connotation* and the mere fact that such decoration is in the form of a Latin cross does not abridge any provision of the Federal or Florida Constitutions.

"The Court further finds that the Plaintiff is not damaged, has no standing to maintain this suit; that none of his rights, privileges or immunities vested by any applicable constitutional provision have been violated; and that the said decoration on the Courthouse does not violate any Federal or Florida constitutional provision; . . . ."

Thereupon Paul took his appeal to the District Court of Appeal without success.

Additional facts were found by the District Court so we here quote portions of its opinion as follows:

"The answer of the County generally denied the allegations of the complaint, but admitted that since 1955 a Latin cross, made by a string of lights and lighted only at night, had been placed on the south side of the courthouse during the Christmas season. It alleged that the cross was

part of the Christmas decorations placed on the courthouse, and was used as a yule season decoration to wish the community well being, happiness and peace. It admitted that the form of a Latin cross can be used as a religious symbol, but alleged that it also had secular connotations, and that the Latin cross on the courthouse had a secular connotation as a yule season decoration.

"The answer was filed on November 14, 1966; a final hearing was held on November 15, 1966, and the final decree herein appealed was rendered on November 28, 1966.

"*The acts which were sought to be enjoined were completed during the Christmas season of 1966.* The record on appeal does not contain evidence of any public funds being appropriated for this purpose for the Christmas season of 1967, and it would appear that this cause might be moot.

"The County Attorney has suggested in oral argument that the cause was moot, but requested the court to consider and decide the question involved because of the general public interest and importance of this matter. We have therefore decided to consider the questions involved herein. See Dehoff v. Imeson, 153 Fla. 553, 15 So.2d 258 (1943); Barrs v. Peacock, 65 Fla. 12, 61 So. 118 (1913), and Ervin v. Capitol Weekly Post, Inc., Fla. 1957, 97 So.2d 464.

"The evidence reflects that this cross, together with other lights and decorations, *was originally*

placed on the courthouse of Dade County, Florida at the request of members of the Miami Chamber of Commerce around 1955. This was done in order to *help decorate the streets of Miami and attract holiday shoppers to the downtown area, rather than to establish or create a religious symbol, or to promote or establish a religion.*

"There was *sufficient evidence* in the record *to justify the finding* of the chancellor *that the money for the erection, maintenance and removal of the lights for the Latin cross had been donated by private persons* for the year 1966 and that there *would be no public funds used in connection therewith.*

"Notwithstanding this, the appellant argues that even if public funds were not used in the erection, maintenance and removal of the lighted cross, his constitutional rights have been violated by the erection of a religious symbol on the side of a public building, the Dade County Courthouse, which his taxes help to support.

"The applicable constitutional criterion, as we define it, is that set forth by the United States Supreme Court in Abington School District v. Schempp, 374 U.S. 203, 10 L.ed 2d 844, 83 S.Ct. 1560 (1963):

'* * * *

'* * * The test may be stated as follows: what are the purpose and the primary effect of the

enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. Everson v. Board of Education, 330 US 1, 91 L ed 711, 67 S Ct 504, 168 ALR 1392, supra; McGowan v. Maryland, supra (366 US at 442).' Id at 374 U.S.222.

* * *,

"It has also been observed that many symbols though religious in origin, have *ceased to have religious meanings or have also acquired secular meanings.* See Abington School District v. Schempp, supra. For example, the dove, the star, the fish, and three intertwined rings have all had, or presently may have, some religious symbolism attached thereto. On the other hand, some have also acquired certain secular meanings.

"The record does not indicate that this temporary string of lights forming a cross was used to support, aid, maintain or establish any religion or religious edifices. Its purpose was not to promote the participation by anyone in the affairs of any religious organizations or sect.

"Consequently, we hold that under the Schempp test, this does not amount to the establishment of a religion in violation of the First Amendment,

> and that it does not amount to a religious activity, controlled, supported or influenced by the government as was found to exist in Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962). See also: State v. Morrison, 1952 La.App., 57 So.2d 238.
>
> "For these reasons, the final decree is
>
> "Affirmed."

It is well to note that this was not a class suit and only challenged the proposed 1966 Christmas decorations not any other. Therefore, any reference in Paul's "Motion to Enlarge the Record and/or Take Judicial Knowledge"—with documents attached thereto (R.214-225; Appendix Exhibit F) pertaining to the County's 1967-68 budget should be disregarded as the same is de hors the record and further the Florida Supreme Court denied the motion. Actually it proves nothing and only that the County's budget contained an amount for "Courthouse Christmas decorations."

Paul, after failing in the District Court of Appeal, petitioned the Supreme Court of Florida upon the "conflict theory" (R.184-213); i.e., pursuant to that portion of Section 4(2) Article V, Florida Constitution, which provides:

> "The supreme court may review by certiorari any decision of a district court of appeal . . . that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law . . ."

The Florida Supreme Court was compelled to deny the writ because the cases relied upon by the petition for conflict supported the lower court's decision; i.e., there was no conflict.

The Court holding it was without jurisdiction referred to Florida Appellate Rule 4.5(C)(6) (R.227) which is an implementation of the above jurisdictional provision, the pertinent portion which reads:

> "Where any decision of a district court of appeal (1) affects a class of constitutional or state officers, or (2) passes upon a question certified by such district court to be of great public interest, or (3) *is in direct conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law*, petition may be filed with the Supreme Court to issue a writ of certiorari to review such decision."

The decision of the District Court of Appeal of Florida, Third District, was rendered and became final on October 3, 1967 as no application for rehearing was filed in that Court and Florida Appellate Rule 1.3 provides:

> "'*Lower Court*' means the court or agency, board, commission or body whose decision, judgment, decree or order is being reviewed or whose act is in question."

> "'*Rendition*' of a judgment, decision, order or decree means that it has been reduced to writing, signed and made a matter of record, or if recording is not required then filed. A paper is deemed

to be recorded when filed with the clerk and assigned a book and page number. Where there has been filed in the lower court a timely and proper motion or petition for a new trial, for a rehearing, or other timely post-trial motion or petition permitted by the Rules, the decision, judgment, order or decree shall not be deemed rendered until such motion or petition is disposed of."

Therefore, the petition filed in this Court, not being docketed until March 9, 1968, was filed one hundred and fifty eight (158) days after the decision sought to be reviewed was rendered by the highest court of this State in which a decision could be had; i.e., the District Court of Appeal of Florida, Third District.

ARGUMENT IN OPPOSITION

POINT I

PAUL DOES NOT HAVE A STANDING TO SUE.

The facts clearly show (R.15-41) that Paul has lived in Dade County for over fifteen years; i.e., prior to the first Courthouse cross in 1955; that he did not even know of the cross until several years ago and did nothing about it then. Actually, he does not even contend he has ever seen the cross. Certainly, he does not contend, nor even testify that it might make a Christian out of him. No; he is 65 years of age, well convinced there is no God, and nothing is going to change his beliefs. He does not even claim to have children who might be converted by the cross. He just does not like the Courthouse cross because he thinks it is unconstitutional. As a taxpayer he is not damaged, even if

private funds had not erected and maintained the cross. His portion of the cost of the cross, if private funds had not been used, is so miniscule as to be incomputable. Please see *Koerner v. Borck*, Fla. 1958, 100 So.2d 398, and in *Bryan v. City of Miami*, Fla. 1951, 56 So.2d 924, the Florida Supreme Court held that where the contested expenditure had already been made a taxpayer had no standing to sue.

As in *Doremus v. Board of Education*, 342 U.S. 429, 96 L.Ed. 475, 72 S.Ct. 394, wherein an attack was launched against a state statute providing for Bible reading in public schools, here we have a case where the "... sole purpose and the only function of..." Paul is to "... assume the role of actor(s) so that there may be a suit which will invoke a court ruling upon the constitutionality of the..." Christmas courthouse cross. In *Doremus*, this Court released jurisdiction for lack of standing to sue.

The same reasoning and result was obtained in *Ashe v. City of Boca Raton*, Fla.App. 1961, 133 So.2d 122, wherein the Court said on page 124:

> "The Declaratory Judgments Act, Florida Statutes, Chapter 87 F.S.A., may not be invoked if it appears that there is no bona fide dispute with reference to a present justiciable question. Thus in a taxpayers' suit seeking declaratory relief against some action of the governing authority of a municipal corporation, the complaint does not present a justiciable case if it fails to allege facts clearly showing that the action sought to be forestalled or nullified will result in a wrongful increase of taxes or in some special injury to the plaintiffs apart from other

members of the community. *There must be an existing adverse interest.* It follows that if the question posed for adjudication is moot or premature, or if the relief sought is merely to secure an advisory opinion of the court, the proceeding is not judicial in nature and therefore not properly within the compass of the Declaratory Judgments Act. These principles are well settled. See Ready v. Safeway Rock Co., 1946, 157 Fla. 27, 24 So.2d 808; May v. Holley, Fla. 1952, 59 So.2d 636; Pirtle v. City of Titusville, Fla. App. 1958, 101 So.2d 397; Guernsey v. Haley, Fla.App. 1958, 107 So.2d 184; Colby v. Colby, Fla.App. 1960, 120 So.2d 797; 52 Am.Jur., Taxpayers' Actions, Section 3."

Please also compare *Guernsey v. Haley*, Fla.App. 1958, 107 So.2d 184 and *Boucher v. Novotny*, Fla.App. 1958, 102 So.2d 132.

Furthermore, since Paul did not testify that he had ever seen the cross, which can only be seen at night after the courthouse is closed, and that a cross on an Army Chaplin's collar is not offensive to him (R.34) the latin cross used merely as part of the courthouse Christmas decorations, cannot interfere with his religious opinions or rights of conscience. In other words since the cross was financed with private funds, since, if public funds were used, his share would have been only 24/100 of a cent, and since he is not damaged at all, much less specially damaged, he has no standing to sue.

POINT II

DO THE COURTHOUSE CHRISTMAS DECORATIONS, INCLUDING THE LIGHTED LATIN CROSS, VIOLATE ANY FEDERAL CONSTITUTIONAL PROVISION?

1. General.

First we invite the Court's attention to the history of the courthouse cross found in the transcript of testimony (R.74-79). Therein it is undisputed that the cross was the idea of private citizens who obtained moneys from the County Commission to provide Christmas decorations, not to hold religious services or to induce non-believers into the Christian world. And, why a cross? Was it thought up because it was a Christian symbol? Obviously, no; as may be seen from the testimony of Mr. Berke, who was and is in the business of building displays, exhibits and decorations. His testimony was, inter alia: (R.76-78)

> "Q. How did you happen to be employed to put the cross up in 1955?
>
> "A. I was—oh, working with the Retail, Miami Retail Merchants Division of the Miami Chamber of Commerce from about 1949 doing the Christmas street decorations. In 1955 certain, Mr. Skip Shepard, who is now, I think Manager of Dupont Plaza Hotel, was then Manager of the Leamington Hotel.
>
> "He was Chairman of that group. He was interested in how they could improve the decorations, and I think he went and appealed to the

City or County Commissioners in order to get some money to help decorate the streets.

"In these conditions that this money was given, it had to go from all the way up through Flagler Street, past the railroad and include the Courthouse.

"It was then decided by the merchants that they should do something with the Courthouse. Ideas were worked up, and the idea, or the simple thought was, we will light the windows and just create a cross. That has been done generally all over the Country.

"We figured that would be nothing to that part of the decorations, but we did run into a heck of a thing.

"We found we couldn't go up to the top because of the jail was up there, and we couldn't light the windows.

"So since we committed ourselves—

"MR. PESTCOE: Excuse me. I don't mean to interrupt, your Honor, but I am going to interpose an objection. That is all very interesting, but it doesn't have any relevancy.

"BY MR. ROSEMOND:

"Q. Who paid you to put the cross up?
"A. I got paid directly from the merchants.

"Q. They got the money from the County?
"A. That is right, yes.

"Q. It was their idea?
"A. They had developed the idea.

"MR. ROSEMOND: You may inquire.

"MR. PESTCOE: No questions, your Honor.'

In other words, the cross idea was purely a part of the Christmas decorations and, as Bishop Duncan testified (R.63-73) merely to wish the community a "Merry Christmas," a secular device for the benefit of the public. Actually, no witness contradicted Bishop Duncan. He was the only one who testified as to the significance of the decorations taken as a whole. He said the decorations were for a secular purpose; i.e., wishing the public seasons greetings.

The courthouse cross is placed there for the benefit of all taxpayers. It wishes them well during a holiday season. We submit that the Christmas season and its holidays are just as much if not more secular than Sunday. Sunday, which was set aside as a non-work day originally by the Lord, is a secular holiday. *McGowan v. State of Maryland*, 366 U.S. 420, 6 L.Ed.2d 393, 81 S.Ct. 1101. Thus it could not be contended that the State or Federal Constitutions are being violated because school teachers are being paid by the taxpayers during the non-working days of the Christmas season or even on Thanksgiving Day. Please also see *Zorach v. Clauson*, 343 U.S. 306, 96 L.Ed. 954, 72 S.Ct. 476, holding that public schools could "close its doors or suspend its operations as to those who

wanted to repair to their religious sanctuary for worship or instruction"; i.e., close for religious holidays. That case also held that the New York City program, which permits students to be released from school to attend religious courses, was constitutional and did not coerce anyone to attend church or to observe a religious holiday or to take religious instructions even though there were students who were compelled to stay in school while others were excused to observe their religions.

2. **Denial of Equal Protection.**

The complaint does not apprise the reader as to how the plaintiff, petitioner here, is denied equal protection of the law. There is no allegation that, upon request, the County Commission has refused to place on the courthouse or any other public building an insignia that may be classified as a non-Christian symbol. In *Murray v. Comptroller of the Treasury Maryland*, Md. 1966, 216 A.2d 897, certiorari recently denied by this Court, the Maryland court in holding the following tax exemption statute constitutional:

> "'(4) Churches, parsonages, etc.— Houses and buildings used exclusively for public worship, and the furniture contained therein, and any parsonage used in connection therewith, and the grounds appurtenant to such houses buildings and parsonages and necessary for the respective uses thereof.'"

said it did not deprive anyone of equal protection, since all houses of worship, including those that did not believe in a Supreme Being were exempt. Here, there is no showing of

discrimination. Why, even the use of public funds to pay the busfare of students attending parochial schools was held constitutional and did not violate the equal protection clause, *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1-74, 91 L.Ed. 711. There are other cases of similar import which we shall cite infra.

3. Establishment and Free Exercise of Religion.

The guidelines for determining whether or not a law establishes a religion or prevents the full exercise of religious beliefs is stated by Justice Black in the *Everson* case, *supra*, as follows:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of

> religion by law was intended to erect 'a wall of separation between Church and State.' Reynolds v. United States, supra, (98 US at 164, 25 L.ed 249)"

As emphasized above, Paul is not being forced or even coerced to believe in Christianity by the presence of the cross. The cross does not support any religious activity or any religious institution. No money is being used to aid, support or maintain any religion or any religious edifice, or institution such as a church school or charity. By placing the lighted cross on the courthouse, Dade County is not participating in the affairs of any religious organization or sect. No, under its power to promote the public welfare, Dade County is wishing its citizens a merry Christmas season.

In the *Everson* case, *supra*, this Court held that governmental funds could be expended to reimburse parents of children attending parochial schools for their transportation to and from such schools, as it did not establish a religion but was for the public welfare.

The mere fact that the courthouse cross may be a Christian symbol, so long as its purpose is secular (for public welfare), the expenditure of public funds is not even prohibited, as pointed out in the *Zorach* and *Murray* cases, supra.

The Florida Supreme Court has held that temporary church use of public property was not unconstitutional. Please see *Southside Estates Baptist Church v. Board of Trustees*, Fla.1959, 115 So.2d 697. Please also see *Fenske v. Coddington*, Fla. 1952, 57 So.2d 452; *Koerner v. Borck*,

Fla. 1958, 100 So.2d 398; and *Bradfield v. Roberts*, 175 U.S. 291, 20 S.Ct. Rep'r at page 121.

The Nativity Scene may be displayed on public school property during the Christmas holiday period without infringing upon any of the constitutional safeguards concerning the establishment of religion, as may be seen from *Baer* v. *Kolmorgen*, N.Y. 1958, 181 N.Y.S.2d 230. In that case the Creche was nothing but a religious Christmas symbol and it was on public property at Christmas time. On the other hand, the cross is not on the courthouse during Easter time when Christ was crucified; and all witnesses agreed that is why it became a Christian symbol. No, the cross is installed on the courthouse only at Christmas time and thus obviously does not portray His birth. The courthouse cross has a secular connotation as a matter of law, which is supported by the evidence in this case.

It is well to note that in *Fowler v. State of Rhode Island*, (1953) 345 U.S. 67, this Court held that public property could be used for church services.

Even in the case of *School District of Abington Township v. Schempp*, 374 U.S. 203, 10 L.Ed.2d 844, 83 S.Ct. 1560, wherein the reading of the Bible each day in public school was held unconstitutional, the Court said that the Bible could be taught in public schools from a secular view point and such was concluded in *Calvary Bible Presbyterian Church of Seattle v. Board of Regents of the University of Washington*, 1967, 436 P.2d 189.

Clearly the Bible is a religious symbol and, yes, more than a symbol; it contains religious teachings. Now, if the Bible can be taught in the public schools as outlined

by the courts; a fortiori, the courthouse cross together with other decorations, can be used for the purpose of wishing the community a happy holiday season.

We also submit that it is not unconstitutional for the Federal Government to spend public funds to print on the dollar bill "In God We Trust" or to place on treasury notes and Federal Buildings of the United States the Great Seal. Such seal contains a religious symbol above the pyramid; i.e., the All-Seeing Eye of God. A fortiori, the courthouse temporary cross is not unconstitutional. Please see *Rector, Etc., of Holy Trinity Church* (1892) 121 S.Ct. 511.

4. **Exhibition of cross not Unconstitutional.**

In *State v. Boyd*, Ind. 1940, 28 N.E.2d 256, the plaintiff objected to tax moneys being used to pay teachers of the Catholic faith (nuns) to teach in a Catholic owned building used as a public school; the Court held such expenditure valid although the teaching sisters gave their excess earnings to the Church and the school room contained pictures of the Holy Family and the Crucifixion.

Similar is *Gerhardt v. Heid*, No.Dak. 1936, 267 N.W. 127 and in *Rawlings v. Butler*, Ky.App. 1956, 290 S.W.2d 801, the Court held it was not unconstitutional to employ members of a religious order to teach in public schools, even though they wore religious garb and emblems while teaching. Please also see *City of New Haven v. Town of Terrington*, Conn. 1945, 43 A.2d 455.

It is well to point out the Florida Supreme Court in *Chamberlain v. Dade County Board of Public Instruction*, Fla. 1962, 143 So.2d 21, did not hold the temporary dis-

play, during the Christmas season, of religious symbols in public schools which were made by school children, unconstitutional. Nor did it hold that the holding of baccalaureate services or the obtaining of a religious census unconstitutional; and neither did this Court. Please see *Chamberlain v. Dade County Board of Public Instruction*, (1964) 377 U.S. 402, 12 L.ed 407, 84 S.Ct. 1272.

We also invite attention to *Protestants and Other Americans United for Separation of Church and State v. O'Brien*, D.C. 1967, 272 F.Supp. 712, holding the Christmas stamp picturing Memling's "Madonna and Child with Angels" constitutional.

We might add, contrary to the petitioner, that the decision of the District Court of Appeal of Florida, Third District, does not conflict with any other decision in point. The case of *Lowe v. City of Eugene*, (Oregon Circuit Court Case No. 76314) is not in point. In that case there was involved a permanent concrete cross erected on a hillside city park overlooking the city. The courthouse cross was a temporary one. Moreover, the *Eugene* case is now on appeal and as yet not decided by the Oregon Appellate Court.

POINT III

THE PETITION FOR CERTIORARI WAS NOT TIMELY FILED.

Paul seeks this Court's jurisdiction under the auspices of 28 U.S.C.A., Section 1257(3) but he did not file his petition until 158 days after the decision sought to be reviewed was rendered by the highest court of this State in

which a decision could be had; i.e., the District Court of Appeal of Florida, Third District.

It is true that Paul sought the jurisdiction of the Supreme Court of Florida; however, that Court did not decline jurisdiction, but rather, it held it did not have jurisdiction. (R. 227). Moreover, Paul should have known that the Florida Supreme Court did not have jurisdiction as the cases he relied upon for conflict support the County's position. They were *Chamberlain v. Dade County Board of Public Instruction*, 17 Fla.Supp. 183, 143 So.2d 21, 83 Sup.Ct. 1864, 160 So.2d 97, 84 Sup.Ct. 1272, 171 So.2d 585 and *Southside Estates Baptist Church v. Board of Trustees*, Fla. 1959, 115 So.2d 697 (R. 184-214).

28 U.S.C.A., Section 2101(c) provides that the writ must be applied for within 90 days, however, for good cause may be extended for an additional 60 days. No extension of time was asked for by Paul and more than 150 days has expired since the decision here sought to be reviewed.

As previously stated the jurisdiction of the Supreme Court of Florida was frivolously sought pursuant to the "conflict theory" when there was no conflict and that Court in *Lake v. Lake*, Fla. 1958, 103 So.2d 639, made it plain the District Courts of Appeal were courts of final appellate jurisdiction. This Court recognized such in *Nash v. Florida Industrial Commission*, ___ U.S. ___, 19 L.ed.2d 438, 88 S.Ct. 362.

Actually Paul admits the District Court of Appeal was the highest court of this state in which the decision in this case could be had. His motion for certifying the

record to this Court was filed in that Court not the Florida Supreme Court. Moreover, his petition is directed to the District Court and the Florida Supreme Court. He does not seek a review of the latter court's denial of jurisdiction but only the District Court's decision.

We therefore respectfully submit this Court does not even have discretionary jurisdiction as the time for filing the petition expired many days before it was lodged in this Court.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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By St. Julien P. Rosemond
St. Julien P. Rosemond
First Assistant County Attorney
For the Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari was served by mail upon ALFRED I. HOPKINS, ESQ., Attorney for Petitioner, 1701 Meridian Avenue, Miami Beach, Florida, and HOWARD J. HOLLANDER, ESQ., and BERNARD C. PESTCOE, ESQ., Of Counsels for Petitioner, 708 City National Bank Building, Miami, Florida 33130, this 12 day of April, 1968.

First Assistant County Attorney